

IN THE CROWN COURT AT SOUTHAMPTON

Southampton Combined Court Centre
The Courts of Justice
London Road
Southampton, Hampshire
SO15 2XQ

BEFORE:

**HIS HONOUR JUDGE WILLIAM MOUSLEY KC
THE HONORARY RECORDER OF SOUTHAMPTON**

BETWEEN:

R

PROSECUTION

- and -

**VICKRUM DIGWA
KIRAN KAUR**

DEFENDANTS

Legal Representation

Mr Nicholas Lobbenberg King's Counsel (Barrister) on behalf of the Prosecution

Mr Neil Anthony King (Barrister) on behalf of the Prosecution

Mr Jeremy Patrick Wainwright King's Counsel (Barrister) on behalf of the Defendant (Digwa)

Mr Benjamin Hargreaves (Barrister) on behalf of the Defendant (Digwa)

Mr Mark Watson King's Counsel (Barrister) on behalf of the Defendant (Kaur)

Other Parties Present and their status

Mr *Sagib Ajile* (Punjabi Interpreter)

Counsel's Closing Remarks (Defence for Vickrum Digwa)

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A **Mr Wainwright:** On the night we're talking about, two young men were out minding their own business, going about their own things, when completely by chance they encountered each other. Neither have a criminal record. There's nothing to suggest either of them would normally get involved in something like this.

B But you know something triggered it, and something meant this ended in great tragedy with one of those two men dead and one facing very profound consequences for that night, and what we're here to decide, what you will need to decide, is about what happened over only a two or

C three minute period in this incident between Vickrum and Henry, and I mean no discourtesy by referring to them by their first names. I think we often have throughout this case and so I'll refer to them the same way a lot of other people have, as Vickrum and Henry, and the Prosecution, in putting the case to you, have to, as His Honour directs you on the law and also Mr Lobbenberg

D when he opened the case reminded you, prove the case. So although I'm addressing you in relation to the majority, with one very important exception, His Honour directs you on the law about that, it's not a matter of me trying to prove to you Vickrum's innocence. It's whether the Prosecution have made you sure of his guilt, and one of the key points of that, I suggest, is the issue of his kirpan.

E The Prosecution chose to start their address to you with effectively an attack upon his Sikhism. By talking about him choosing to go out armed with a knife, they are ignoring their own evidence about the significance of that kirpan, the wearing of which, and I'll come to it in more

F detail later, you can see is normal for him all the time. Not that night. He hasn't chosen, as they rather melodramatically said to you, to go out that night armed. He's done what he does all the time. He's gone out with his kirpan, his symbol of his religious faith, his part of his Nihang order.

G That's what he's done, and *when it comes* from somebody who in his speech referred to religious bits and bobs to describe what the, their own witnesses describe are the sacred tenets of Sikhism. To dismiss that sacred code and a turban as a religious bits and bobs may tell where the Prosecution are coming from in relation to an acceptance that some religions operate in

H different way perhaps to others. That for some people, things are sacred that might not appear to be for others, and it is important, because in this case the Prosecution are saying that there is no religious reason for Vickrum to be wearing that kirpan, and I suggest to you there clearly is

A

in this case, and as far as the evidence is concerned, we don't have, as has already been referred to you, any CCTV of what actually happened during the struggle. The only witness as to what actually happened is Vickrum, and if Vickrum Digwa tells you something happens, then at face value, your starting point should be to accept what he says. Of course, you will put it in context of the other evidence.

B

Mr Lobbenberg King's Counsel set out to Vickrum Digwa when he gave evidence and to you a whole theory as to what the Prosecution say happened. But that theory has no evidential basis. It's the Prosecution saying:

C

"He is guilty."

And clearly, tragically, we know he did kill Henry:

D

"We say it's murder, therefore we tell you to reject everything that might point towards innocence, without having the substance or the evidence to back that up."

E

That there is circumstantial evidence clearly supports that Henry Nowak that was killed by the kirpan in Vickrum Digwa's hands, but there isn't any real circumstantial evidence as to exactly what did occur just before and just after that.

F

When you are told confidently by the Prosecutor:

"Henry Nowak didn't start this"

The first question in your mind is:

G

"Where's the evidence to make us sure he didn't start it?"

There isn't any. Circumstantial otherwise. When you are told:

H

"Henry Nowak didn't use any racist words"

The question there is:

“Where’s the evidence that he didn’t use those words?”

A

Compared to the clear evidence of Vickrum Digwa not just now to you but all the way back when his family turn up, he’s making it clear that racist words have been used, and you may think that that must have been the catalyst or part of what happened between these two men.

B

It’s very difficult to find any other reason. When the Prosecution say to you that there’s no reason for the Defendant to think that Henry was drunk, and you look at the evidence you may think that he would have had that impression.

C

As far as the racist words are concerned, it’s a matter for you but the Prosecution have decided to tell you that Henry Nowak’s ex girlfriend’s father may have been of, may have, was of mixed heritage, and I suggest that’s a rather vague, generalised basis for claiming he didn’t use racist words. Tolerance to some people, either individuals or certain racial backgrounds doesn’t mean

D

people aren’t capable of racism towards other backgrounds. Because at the same time as that, those racist words were used, we know because common sense means it must be the case, he referred to the fact he was an Essex boy, and you may wonder why that was, and the reason we know it is because Vickrum Digwa says it very early on and the only way he could have known that there was some Essex connection was if he’d been told by Henry, but why would Henry chose to say he’s an Essex boy, he’s from Essex?

E

We know that Henry turned to face Vickrum Digwa and we know Vickrum Digwa faced Henry. So when the Prosecution say to you:

F

“Why did he turn around?”

they haven’t asked you to consider well, why did Henry Nowak turn around? Why did Henry Nowak get out his phone? Why did Henry Nowak say:

G

“Say you’re a bad man, say you’re a bad man”

H

What was there about Vickrum Digwa as he’s walking to get the chips from the car, apart from the fact he’s dark skinned, apart from the fact that he’s wearing a turban, that might have provoked those sorts of comments from Henry Nowak?

As far as alcohol is concerned, it, it's a matter for you. The Prosecution say to you:

A "Look at those videos, he's not drunk."

B Well, I suggest you look at those videos and you can see he possibly is. Ultimately, it's not what I say, it's not what Mr Lobbenberg said, it's not even what Vickrum Digwa said when looking at the videos. He's told you he thought that man was drunk, the way he was acting, the smell of alcohol, and I suggest if you think about Henry, One Strongbow Henry, a bit of a lightweight when he came to alcohol, the man his own friends says would get drunk quite easily and play up to being very drunk. Prosecution make a big play of the legal limit, though when you look and listen to those recordings, imagine if you were walking behind him or saw him use his key to get into one of those cars he bumps into, would you be sure that was a man who was capable of driving?

D The legal limit, as we've heard, that's an arbitrary thing. What it means is, had he been driving, he couldn't have been convicted, but look at the state of him and consider what his friends say about him because very importantly as a matter of expert evidence *you've* heard:

E "the effect of blood ethanol concentration would have had on Henry Nowak would have largely depended upon his tolerance."

So the effect depends on the tolerance of One Strongbow Henry who's a bit of a lightweight.

F "In a normal social drinker, someone who drinks regularly and perhaps more, a blood alcohol concentration would not be expected to cause notable intoxication."

G But you may think he was influenced by alcohol and certainly he may well have given that impression to Vickrum. His friends said Henry was on a call, he sounded tipsy but not drunk. So no one's suggesting he's collapsing, no one's suggesting he's incapable of walking and speech, but just he is somebody who is influenced, and we all perhaps have different names for it, those of us who sometimes drink, we might say we're never drunk but occasionally tipsy, we're occasionally influenced, but we never accept we were, ourselves are drunk. We can tell you everybody else is drunk, but we're not, and when you watch the CCTV, and I'm ask, invite you to have a look at it. Form your own conclusions. Is there a little stumble? As he goes up

H

A the stairs at the pub, if you were going behind him, might you think you're following somebody who's maybe had a drink or two? As he comes down and goes to the door, is there a little stumble that might make you think:

“maybe this guy's had one or two drinks”

B So I am going to invite *to* play, please. So what we're going to see is in the pub and I'd like you to look at *it* as he goes up the stairs, down the stairs, and out of the building.

(pause)

C (beginning of recording playback)

(background noise – indistinguishable voices)

D (end of recording playback)

E **Mr Wainwright:** Now, as a suggestion, you have a chance to look at that in a lot more detail yourselves. He's not falling over. There's a little bit of wobble going up the stairs, little bit of wobble going out, and this is man that when we see him further on, I suggest, that the, he bumps into a car at one point. The way he's talking, again, if you saw him you may think, if we can play the next act, extract, please --

F **Mr King:** (inaudible)

Mr Wainwright: Yes.

G **Mr King:** *All right.*

Mr Wainwright: That's --

H **Mr King:** So that (inaudible)

Mr Wainwright: Just being teed up and while that's done, as he's walking along bumping into cars, talking into cars, the exaggerated loud yawn, again if that was somebody coming towards

you or walking away from you in the street, might you think, especially if they started speaking to you in a bizarre way:

A

“this person’s probably had a few too many”

(pause)

B

Mr Wainwright: Have you got the volume?

(pause)

C

Mr Wainwright: Thank you.

(beginning of recording playback)

D

Mr Nowak: (humming)

Mr Wainwright (over recording playback): He’s drifted across the pavement into that car.

E

Mr Nowak: There you are, bro. Hello, car. *All right*, we’ve got to walk here, do you know what I mean? Oh.

(background noise)

F

Mr Wainwright (over recording playback): It’s a matter for you --

Mr Nowak: *Right*, innit bad man --

G

Mr Wainwright (over recording playback): Whether he starts heading off towards --

Mr Nowak: What bad man.

H

Mr Wainwright (over recording playback): The wall there --

Mr Nowak: You’re a bad man --

- A** **Mr Wainwright (over recording playback):** Sorry.
- Mr Nowak:** Say you're a bad man, go on.
- B** **Mr Wainwright (over recording playback):** I'll just --
- Mr Digwa:** I am a bad man.
- Mr Wainwright (over recording playback):** Restart this last bit.
- C** (end of recording playback)
- Mr King:** *But, play* the whole video again?
- D** **Mr Wainwright:** Not the whole video again. If it's not too, yeah, just carry on from wherever's suitable. That's fine. Thank you.
- (beginning of recording playback)
- E** **Mr Nowak:** Oh.
- (background noise)
- F** **Mr Nowak:** *Right*, innit bad man, what bad man. You're a bad man, say you're a bad man, go on.
- G** **Mr Digwa:** I am a bad man.
- Mr Nowak:** Are you a *bad* --
- H** (end of recording playback)
- Mr Wainwright:** Thank you. So at the beginning of that, who was facing towards who? Henry Nowak has passed Vickrum Digwa. Vickrum Digwa has passed Henry Nowak. You can hear

he, by this stage decided to get his phone out. He started to film, why? And Vickrum Digwa turns, he turns to face Henry Nowak when Henry Nowak starts, says:

A

“Say you’re a bad man, say you’re a bad man.”

B

So when the Prosecution say to you, it’s a lie that he’s drunk think carefully. Are you sure? Are you sure that that man is stone cold sober and not affected by drink? When the Prosecution say to you, it’s a lie that he started it, look at that video and what was happening. Because alcohol can impact those who drink it a whole load of different ways. You might say things you wouldn’t normally say. Some people might act slightly more aggressively than they normally do, and it may be it’s on occasion, it may be sometimes somebody’s made happy by a little bit of alcohol, sometimes in anyone’s experience, friends, family who’ve had alcohol know sometimes it can make people say stupid things or be slightly more aggressive, and his night hasn’t worked out perhaps the ways he’d hoped, he’s left the football group, he’s heading off, he’s walking home, perhaps a little bored, he looks a little drunk, and he bumps into somebody, and perhaps in daytime if he hadn’t had a drink, or perhaps the next day, nothing might have happened, but on that day he sees, walks towards, bumps into Vickrum. He then calls him, he then films him.

C

D

Vickrum who, no dispute, has just gone out with his brother and cousin that night and he’s going back to his brother’s car to pick up some chips, and it may be tragically had he gone to pick up the chips a minute later, a minute earlier, none of this would have occurred. Henry Nowak wouldn’t have bumped into him *Henry Nowak* wouldn’t have responded and said things to the man he sees, who he doesn’t know, who’s dressed in a large turban. You’re not deciding at all whether in his everyday life Henry would do something like that. You’re deciding are you sure on that night he didn’t react in some way that was racist towards the man he saw?

E

F

Moving then to Vickrum himself, he’s moved past, even if they’ve bumped into each other. He’s not at that point coming towards Henry, but at that point he’s faced with somebody calling him who’s behind him, who he says is slightly unsteady saying odd things. I mean, it’s a pretty odd thing to start calling to a total stranger:

G

“say you’re a bad man”

H

A

and is filming him, and filming to a lot of us may seem fairly innocuous, may seem it's insignificant. Some people are, perfectly understandably, value their privacy very greatly and get very upset at a stranger filming them. That that filming is tied in with being told you have to say you're a bad man, might that cause a fear and a concern for somebody? Somebody who that fear is increased because he says, as he told you, that people sometimes film their attacks.

B

That sometimes getting that phone out can be what comes before an attack, and he also talks about the fact he's particularly wary because sadly there has been experience of racial attacks in that particular area. So when the Prosecution say, well, you could have just carried on with your walk, that's a possibility, but if you've had a stranger say bad things, behave oddly, then turning your back on that person might be a danger to you. What he does do is he turns and he

C

takes the phone.

D

Bear in mind at that point there's been no use, no reference to any sort of harm to Henry, any sort of use of the kirpan. He's simply gone up and taken the phone that was being used to film him, and you heard him saying, having grabbed that phone, Henry then punches out and punches his turban off, and there's some more punches and Henry grabs his hair, pulling him in, pulling him down, and that's supported by the evidence because you know he isn't wearing his turban, by the time shortly afterwards he's managed to tie his hair, as he said, very quickly into a bun, but the turban's clearly gone, and I suggest you know what you know, and applying

E

your minds fairly, that the only reason that Vickrum would not be wearing his turban would be if somebody has punched it off or pushed it off his head, and there's some more punches and his hair is grabbed, pulling him in.

F

You may remember the word he used, he's ragged. He's being shaken around like a ragdoll with his hair, and Henry doesn't let go. So at the point where his kirpan is used, he is under attack, in pain, and scared from somebody who has, as you heard him say, called him a Paki, made some reference to his ethnic background, and made this reference to himself, Henry, being

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from Essex. The only reason, I suggest, to mention his Essex background is perhaps to appear hard, perhaps to show that in Essex they don't have such tolerance for people from ethnic minorities, we don't know, but it's an odd thing to say, but it's not said as some sort of aggressive thing.

H

The Prosecution say:

“Well, he only mentions the word Paki when he's asked later.”

A That's when he specifies that word, but they also tell you Vickrum must have told the family about the attack when they arrive, and what you will notice is straightaway the family are saying it's been a racial attack, and if the Prosecution are right that the family have got their information from Vickrum, it means Vickrum has said straightaway:

B "This was a racial attack."

They might not have used the specific word until he's asked what word is used, but there's no doubt he said from the outset he's been subject to a racist attack, and the words this person's using, again it may be lawyers getting more excited about differences, but is there really a big difference between being told by somebody:

"I'm going to fuck you up, I'm going to kill you"

D There isn't, I suggest. What's clear is threats are being made that he's going to be harmed, and you might think it very unsurprising if you're in that situation that he would feel threatened, and he becomes aware, as he says, at that point when he's vulnerable, when he's down, that his kirpan, which is on display, not hidden away, could be taken, and at that point he draws it, and we know he must draw it at that point, when his hair has been loosened because some of it ends up on the kirpan handle itself and you may think the only where his hair could have ended up there is if he's drawn it whilst his hair's out, his hair's down, his hair's being held, and taking it while he's right down, he stabs Henry twice around the back of his right leg and you may feel those aren't injuries intending to cause really serious harm, and those stab wounds certainly aren't something that would lead you to be sure this is somebody trying to cause really serious harm.

G What it does suggest is this is somebody who is down, who is being held, who is trying to stop his attacker. That doesn't work. The grappling continues, and eventually it results in Vickrum pushing Henry away as he demonstrated with you, his kirpan has gone to his right hand, and he pushes him away, and the Prosecution say it's not consistent because of the, some odd experiment with a ruler, which is rather false, I suggest to you, because he wasn't being asked to demonstrate the orientation of the blade, how, just how he pushed him away, and it's very difficult to give somebody a ruler that has no handle and ask them to put it into the context of

H

a kirpan which clearly does, and there's no expert evidence to support the Prosecution saying that isn't how it happened.

A

What we do know is that fatal wound was caused by what may well be, and therefore applying that burden and standard of proof, giving the Defendant the benefit of the doubt, on the pathology expert evidence, mild force, and also significantly she talks about it travelling on a slightly upward trajectory which again fits in with somebody who's down coming up, and that may well be where you get that upward trajectory in that particular wound.

B

(pause)

C

Mr Wainwright: What happens after that when the family turn up is awful to hear, it's awful to watch, it's awful even to read. *Well I* think mentioned that at the very beginning, but, but the particularly awful words quoted by Mr Lobbenberg earlier on, that's Gurpreet. The aggression and anger that's spoken about, that's Gurpreet, that's not Vickrum, and when the witness talks about what they heard, that is clearly after the encounter between Henry and Vickrum, and again, it, it, it's uncomfortable to think about it but if at that point Vickrum has deliberately stabbed him in the chest, he would know he was very seriously injured and the logical thing would have been to leave the scene and take that kirpan with him. Get himself away, get the knife away.

D

E

You may think, it's a matter for you, what you see and hear him and the family do actually suggests, however horrible that it is now for us looking back because we know at that point he's dying, but at that point they don't know he's dying. When they're acting in the way they do, Vickrum doesn't know, he knows he's stabbed him, but not he's inflicted that particular fatal wound, and the Prosecution suggested that he knew any medical attention would reveal what he'd done and that's why he didn't call the ambulance. Well, that's equally a reason not to call the police. In fact, more so. Why would you call the police if you know you've done that?

F

G

So do be careful about what other people say and do, and not holding that against Vickrum Digwa, and do be careful to bear in mind that, as I suggest to you, it's, it really does appear that when he is filming him, he is still upset, he is still angry, and he does still talk about the racism and he does still talk about the Essex element, and I suggest to you that he doesn't appear to know the full force of what he's done at that point.

H

Your Honour, that would be a convenient moment.

A

(luncheon adjournment)

B

Mr Wainwright: Both before lunch and now, I have been and will be referring to things which the Defendant has said, Vickrum has said, whilst he gave evidence, and do bear in mind, when you consider the evidence he gave, that giving evidence in court is not an easy thing to do. Some of you may just, when you had to spend 20 seconds taking your oaths and affirmations at the beginning, felt in a public room if you're not used to speaking, it's quite intimidating. Imagine what it would be like standing there for two hours with a very able, very experienced, and quite robust Prosecutor putting questions to you about things that happened six months, picking up on every little difference that perhaps matters more to lawyers *than* it would matter if you were telling a story to friends and family in a pub.

C

D

He's somebody with little or no previous experience of it, not used to speaking in public, becoming the focus of, of attention and having to explain distressing, complicated, and in this case very fast movement incident, but that, I'd ask you to consider, may be difficult. It, it's no memory test. Saying something slightly different half a year later, it's a matter for you to decide how significant that really is, and is there such a difference, for instance, between:

E

"I'm going to fuck you up [and] I'm going to kill you"

F

Is there such a difference between pushing and punching somebody if the meaning is the same? One is a clear threat and the other is an action to drive somebody off.

G

The key point for you to decide is whether you can be sure that Vickrum intentionally stabbed Henry in the chest, which takes me onto looking at the pathology. That is the expert evidence you heard about this, and there are, of course, three, I suggest, significant injuries in this case, but the pathology is consistent with the account Vickrum Digwa has given. The Pathologist described the buttock wounds ...

H

(pause)

Mr Wainwright: As being, going into the thigh from the back of the thigh, and we're talking about the right, so it would be the right buttock of Henry as he's facing towards Vickrum, his

A

right buttock as he's down, and she describes it going forwards medially, that is towards the inside which is consistent with the knife coming round, and obviously if the knife's coming round that's also consistent with not going to the same depth it does when it goes into his chest, *and* the same again with the other injury. The other injury's also described as coming medially, that is towards the centre, and slightly upwards. So the two injuries to the buttocks are both consistent with what the Pathologist had to say with the explanation given by Vickrum.

B

C

Contrast that with a scenario put forward by the Prosecution which may be consistent with what they say but there's no evidence to support that suggestion as to when those injuries were caused. I've already addressed you on the, the principle injury, and again, looking at the pathology on that, the evidence is the wound passed from front to back, upwards, again consistent with him coming up as he demonstrated and again medially which means going towards the centre, and again a reminder, that's done with mild force.

D

E

As far as the other minor injuries are concerned, the cut to the chin area and the nick through soft cloth in the groin, Vickrum hasn't tried to suggest how they happened because he's being honest, he doesn't know. It's not a lie told to explain how they happened, but consider the nature of them. The Prosecution talk about five stab wounds as if there's five very positive, definite attempts to stab somebody. Matter for you as to whether that little nick in the groin area could possibly be described as a serious attempt to stab somebody in the groin, or might it have happened during the struggle and it is no more than a, a tiny nick?

F

G

Equally, as far as the injury to the face is concerned, that again, I suggest, is wholly inconsistent with a deliberate slash or stab towards that area. The, it is and it clearly bled quite a bit, but it is effectively a small flesh wound to that area. I suggest clearly not something you could say you're sure is an attempt to injure in a serious way. It may possibly be and it's not for the Defence to say but far more likely as you've heard the knife goes up, it's caught him again in the struggle and that's why it's no more than that little wiggle and nick that you see rather than being consistent with any sort of deliberate attempt to use the knife.

H

Moving on to defence injuries, the Prosecution make a lot of this but in a very blinkered way. They suggest it's consistent with a sudden attack, but we know they're facing each other. It ignores the obvious. One reason you don't have defence injuries is if you're the attacker. An attacker doesn't have defence injuries, and if Vickrum Digwa is right and he was seized by the hair and pulled in before the knife ever came out, then there aren't going to be defence injuries

because he isn't, and you've seen the video. He doesn't approach Henry holding a knife and waving a knife at him, and that's why, you may think, there aren't these defence injuries. 1) Henry was the attacker, and 2) everything happened at such close quarters that those sorts of injuries to the hands aren't going to happen because his hands are on Vickrum's hair, and when he eventually does use the kirpan around the back, again, there wouldn't be defence injuries to the hands. They're so close when he drives Henry Nowak away, as he's holding him, again, there wouldn't be defence injuries to the hands. So be very careful about what I suggest is something of a red herring to talk about defence injuries, and the lack of those injuries actually supports the account that Vickrum has given about being the subject of an attack.

It's said there's no injuries to Henry Nowak's hands to evidence punching. Well, again, be very careful you don't make something out of nothing. There's no evidence to say that punches to someone's turban or their body would in fact have caused injuries to his hands. It, so be very careful about accepting the, the lack of injuries as any sort of evidence that he hasn't punched him, because different punches may affect ones hands in different ways, because you do know that turban was knocked off and sensibly the only way that turban, which you say how tightly it ties, was knocked off was somebody, and it must have been Henry Nowak, has done it when you also know that there was a minor injury caused to Vickrum Digwa's cheek. Again, evidence of a blow early on but most of this struggle is a very tight close up wrestle.

I, I'll move on now to deal with some of the other Prosecution points made, and bearing in mind, as I said to you, I don't deal with them because the burden is on the Defence, I simply deal with them because I don't want you going into the jury room and think:

"What about that?"

It's suggests he lies about the ambulance. Well, is it a lie or a, might it be a genuine error? Because you may recall hearing at quite an early stage his father says:

"Call an ambulance."

His brother then dials 999 and we know in fact his brother is talking to the ambulance. If you can be kind enough to look at tab 8, I hope I've got the right tab because I think tab 8 and tab 9 got switched around, and if I have got the right tab, the first page *you'd* start at:

“video of interest, brackets three”

A

although it may be tab 9 for some of you because, as I said, I know they got switched around, so it's tab 8 or 9 but it's, has a heading:

“video of interest 3”

B

at the top and some red writing like that.

If you go please to page 3 of that ...

C

(pause)

Mr Wainwright: Top of page 3, we've got Gurpreet at the scene saying to the Police Officers:

D

“Do you want to speak to the ambulance service? They're on the phone.”

So it may be that Vickrum hasn't personally contact the ambulance service but we know he, his father said:

E

“Call an ambulance.”

We know that he knows Gurpreet has dialled 999, and we know at some point Gurpreet is talking to the ambulance people on the phone. So when he says an ambulance was called, is that really a lie, or might just that be an error? How significant is it?

F

What is accepted is a lie is about the stabbing, and that is clearly something you're going to be considering very carefully. But before you hold that against him, subject again to His Honour's directions, you have to be sure he lied out of guilt, because sometimes a person will lie as panic, embarrassment about what they've done, or an attempt to boost a genuine defence or hide bad behaviour that doesn't actually amount to murder, and it may be out of fear, may be out of panic.

G

H

He does know he's stabbed him and he knows Henry Nowak is clearly very badly wounded by that stage. There *he is*, amongst a lot of people, and it's very difficult for us to judge how we

A would react, we'd all like to say that we would always own up to everything immediately. But a lot of people don't and it doesn't mean he's guilty of murder. That's something for you to consider, when he distanced himself from trouble rather than trying to explain it. He's a young man, the incident has happened quickly, and you may think it's an, an evidence of fear or panic, but not necessarily guilt.

B It's also very important to bear in mind that from the evidence of the Pathologist the time period made no difference to the death. In other words, this isn't a situation where his lie has brought about the death. The Pathologist evidence was the timeframe meant it made no difference because she was talking about at that stage when the Police Officers are there and the
C handcuffing.

D You, you've been drawn your attention to the prepared statement and what's contained within His Honour's legal directions. Those directions are matters that His Honour has left for you to consider. It, it's, they're points the Prosecution made that as a matter of law you're entitled to consider. It's not the Judge telling you that you must or you should.

E He has listed there those matters which you can consider, and just considering them, the first one was Henry stumbling and weaving across the pavement. Now, I'm not going to go into that again. The reality is if you conclude it may be that Henry Nowak was displaying himself to be in a, a state that appeared to be intoxicated, then it doesn't really matter whether it's mentioned by Vickrum at an early stage or not in his prepared statement.

F In relation to the use of the specific words, that's a matter for you but clearly I suggest the only reason that Vickrum would have reacted the way he did, bearing in mind what you know about his good character, would be if he genuinely felt under threat at that point.

G As far as the push is concerned, do bear in mind the fact that again, as I said to you, at that point it may be that he's tried to cover up for something which *he* did *but* isn't necessarily guilty of because he's been charged with murder, he's in a police station, he's been told by his solicitor, he told you, to make no comment, and it's hardly surprising, I would suggest, that a young man
H in those circumstances who has a legal professional come to a police station effectively at that point the only person that appears on his side and tells him to make no comment.

A Most of you probably haven't ever been in police stations, but you may have been to a doctor's, a dentist's, any sort of professional, and normally if they give you advice to do something or not to do something, it's very understandable that that's your response:

"I'll follow the advice I've been given."

B Moving on to some other points made by the Prosecution, they've shown you two pictures taken at different stages of the state of the hair of Vickrum. What is quite clear is his turban must have been knocked off in the first picture, because to suggest he's taken it off would be absurd, and the fact that he's, has as you told you tied it up quickly into a bun isn't really that significant.

C What he hasn't done at that point is put his turban back on, and be very wary of those sorts of snapshots, and having quickly tied his hair up not in a turban, had you seen his hair in a tightly tied turban and then seen it down, that might have been one thing. The fact that his loose bun has come unravelled whilst the incident is still going and he's still looking for his items I suggest needs to be treated with caution as to its significance.

D His hair must have come down in the struggle, otherwise his turban wouldn't be off, he wouldn't have tied it quickly into a bun, and particularly significantly, if you could go to tab 2, please. Page 6 of tab 2.

E (pause)

F **Mr Wainwright:** So tab 2 is a series of photographs of the knife, kirpan. Have a look at tab, page 6. What you can see there is quite clearly a lot of Vickrum's hair on the knife, and you need to think to yourselves:

G "How could that hair have possibly got on that knife if his hair wasn't loose at the time the knife was used?"

H And isn't that wholly consistent with the account that he has given that his hair was down, his hair was being held, and it's at that point he takes out the kirpan, and no doubt as he does so, tangling it up with his air. There can be, I suggest to you, and has not come from the Prosecution any other sensible explanation as to how his hair gets there. It must have come during a struggle with his hair down when the kirpan is taken out.

(pause)

A

Mr Wainwright: Moving on, I mentioned to you about being careful about Gurpreet, what Gurpreet says. The same applies to that conversation they have in the van. A lot of the:

“say this, say that”

B

comes from Gurpreet. This isn't Vickrum asking for advice or Vickrum saying he's going to make things up. He doesn't know he's being bugged, *and then* what he says is quite genuine. Prosecution said:

C

“Well, you don't mention racism when you're talking to Gurpreet.”

D

Well, remember, Gurpreet knows all about the racism because Gurpreet's the one who right at the very beginning is so exercised and agitated about the racism. So saying, you don't mention it to him when it's something he already knows isn't really a strong point from the Prosecution's point of view. What Gurpreet wants to know is what's he done, and bearing in mind that those words he uses about what he's done aren't admissions of attack. He talks about the opposite when he's talking. He talks about why he did it. He talks about the *way*, he talks about the attack he come under and defending himself.

E

I'm now going to move on a bit more detail to deal with this whole issue relating to the kirpan and its possession, which is, as I said, not to do with religious bits and bobs, but is a very significant part of Sikhism and also particularly Nihang Sikhism which is the order or branch that the Defendant's part of, and you need to bear in mind very much the expert evidence you heard.

F

Firstly, as a matter of law, somebody is entitled to have a kirpan with them for religious reasons, and if you conclude that it is probable that is why he did have it then that satisfies that requirement, because there is no set number. The expert said you'd need at least one, but also accepted *for* Nihang Sikhs it may be more than that, and again the display, the wearing them outside was part of the reclaiming their culture he talked about.

H

So there isn't a maximum number. As far as length is concerned, it's within the three to nine inches you've heard about, and it was explained to you by Vickrum Digwa why it is he has the

A

much smaller one, that's always on him, but the larger one is part of his religious order of Nihang Sikhs as to why he has it. So he can carry more than one. There's no compulsion, although it's accepted some orders, Nihang orders do suggest it by the Crown's expert. It's a noble thing to carry more than one, of cultural and religious importance, and that younger Nihangs tend to be proud Sikhs and proud of their Sikhism, and can be seen to be reclaiming it.

B

So therefore there is not, I suggest to you, if you accept its probable religious purposes, anything significant about the fact that he has one on display, and just as demonstration of that, could I invite you please to turn to 18 in your bundle?

C

(pause)

Mr Wainwright: Sorry, 19, my mistake. I do apologise. 19. Go to the very back of your bundles, section 19. Hopefully you'll see this picture, section 19.

D

(pause)

E

Mr Wainwright: And what you can clearly see there in that photograph is Vickram Digwa in public at his place of work in a publicity shot wearing over his clothing his kirpan. If you go over, please, to the series of pictures we have, and I'll, we'll go through them but what they demonstrate, I suggest to you, is quite clearly, whether it is night time, daytime, no matter where he is, as part of his religious clothing just as his extra turban is part of that faith, so is the wearing of the kirpan, and we can see it there in that evening picture, we then see him out clearly socially, and he and his brother both have them outside their clothing on display.

F

We then move to Pret, again, the picture in a shop with his girlfriend, clearly on display, a knife. Another picture at work. Picture at a railway station, and a picture on a train, and finally the last two, out, out and about in the countryside, back in a shop, and then all together at the very end.

G

H

The Prosecution logic which they invite you to convict him of Count 2 on is that he carried that knife that night not for religious purposes but as a weapon. I suggest to you when you look at those, leaving aside what happened in the incident, he hasn't carried that knife with him that night for any sort of weapon purposes. He's carried that knife in the same way he clearly does every day of his life, as part of his religion which under law, if it's part of his religion and that's the purpose, he's allowed to do.

A The Prosecution say, well, it becomes offensive when he uses it.

B You heard it doesn't if it's used in self defence. You've heard Vickrum Digwa say the reason he used that knife that night was in self defence, and if that is true, then that has not suddenly become non religious. He has carried it for his religious reasons which he's allowed to do, and that is how it became used *in extreme* that he felt or may have felt at the time a necessity.

C His Honour has told you in legal directions, don't start with a theory and try to fit the evidence in with it. Well, I suggest that's what the Prosecution have done here. They've started with a theory, understandable because somebody's tragically died, they've started with a theory of murder and they've then tried to fit things in. But what they haven't fitted in are facts and evidence because they don't have them. They say, well, look at the fact he lies at this point. But look at the fact that we suggest this is what happened without evidence.

D An invitation to convict somebody of murder, or any offence indeed, that isn't supported by evidence to make you sure, and without clear evidence to disprove the account given by Vickrum Digwa, a young man of good character who that evening you may be sure was just going out minding his own business, and for whatever reason, from what you've seen on the

E phone, Henry engaged with him in a hostile manner, and if you think that may be true, he would be not guilty of murder, and even if you thought what he'd done was wrong, he would only be guilty of manslaughter unless you were sure he had an intention to cause really serious harm that wasn't justifiable.

F Thank you, Your Honour.

G The Transcription Agency hereby certifies that the above is an accurate and complete recording of the proceedings or part thereof.

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